

LAW OFFICES OF

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MAURO C. CASCI ☐

☐ ADMITTED IN NJ & NY  
☐ ADMITTED IN NJ & PA

WILLIAM PFISTER, JR.  
ADAM E. LEVY ☐

September 4, 2009

***BY ELECTRONIC FILING ONLY***

Clerk, U.S. District Court  
Clarkson S. Fisher Building & U.S.  
Courthouse  
402 East State Street, Room 2020  
Trenton, NJ 08608

RE: **Yapak, LLC v. Hanover (MC)**  
Case No. : 3:09-cv-3370 (AET) (LHG)  
Our File No. : D5258

Enclosed please find an original of the following documents:

(xxx) Amended Complaint	( ) Certification
( ) Answer	( ) Order + 2 copies
( ) Interrogatories	( ) Certificate of Mailing
( ) Demand for Documents	( ) Return Envelope
( ) Stipulation Ext. Time	

(xxx) Other: Order entered by the Honorable Anne E. Thompson, U.S.D.J., on August 28, 2009, granting plaintiff leave to file an amended complaint

Would you kindly:

(xxx) File and return conformed copy. The costs, if any, may be charged to our account number 140087

Respectfully submitted,



Adam Levy - Ext. 118  
alevy@cascilaw.com

AEL:mg/enc.

LAW OFFICES OF

**MAURO C. CASCI**

**Our File No.: D5258**

**Page 2**

***BY ELECTRONIC FILING and REGULAR MAIL***

cc: John P. Malloy, Esq.  
Robinson & Cole  
280 Trumbull Street  
Hartford CT 06103

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**Page 3**

bcc: Phil Kaluszyner  
Yapak, LLC d/b/a Klassi Kids  
422 Monmouth Avenue  
Lakewood NJ 08701

RE: **Yapak, LLC v. Hanover (MC)**

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

YAPAK, LLC,	:	
	:	
Plaintiff,	:	Civil No. 09-3370 (AET)
	:	
v.	:	<b><u>ORDER</u></b>
	:	
MASSACHUSETTS BAY INSURANCE	:	
COMPANY, et al.,	:	
	:	
Defendants.	:	
	:	

THOMPSON, U.S.D.J.

This matter having come before the Court upon Defendants' Motion to Dismiss, [4], and Plaintiff's Cross-Motion for Leave to File an Amended Complaint, [7]; and the Court having considered the parties' submissions without oral argument pursuant to Fed. R. Civ. P. 78; and pursuant to Fed. R. Civ. P. 15(a)(1)(A); and

IT APPEARING to the Court that no responsive pleading has been filed and that Plaintiff has not previously amended the Complaint; and for good cause shown,

IT IS on this 28th day of August, 2009,

ORDERED that Plaintiff's Cross-Motion for Leave to File an Amended Complaint, [7], is GRANTED; and it is further

ORDERED that Defendants' Motion to Dismiss, [4], is DENIED without prejudice and that Defendants may re-file its motion to dismiss after Plaintiff has filed an amended complaint.

s/ Anne E. Thompson  
\_\_\_\_\_  
ANNE E. THOMPSON, U.S.D.J.

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

YAPAK, LLC d/b/a KLASSI KIDS,

Plaintiff,

v.

Case No.: 3:09-cv-3370 (AET) (LHG)

MASSACHUSETTS BAY INSURANCE  
COMPANY, THE HANOVER INSURANCE  
GROUP AND JOHN DOES 1-10,

Defendants.

**AMENDED COMPLAINT**

Plaintiff, complaining of Defendants says:

**FIRST COUNT**

1. On or about August 1, 2006, Plaintiff was insured under a Business Owners policy of insurance issued by the Defendant Massachusetts Bay Insurance Company, affiliated with the Defendant Hanover Insurance Group. Under Policy No. ODS-6450447-04 the Plaintiff was insured for damage to personal and real property, Loss of Income/Profits, Expediting Expenses/Extra Expense and Loss of Profits.

2. The Plaintiff sustained certain losses for which claims were made to the Defendants Massachusetts Bay Insurance Company and/or The Hanover Insurance Group.

3. The Defendants have failed and refused to pay the claims of the Plaintiff thereby breaching their contract with the Plaintiff.

4. As a direct and proximate result of the breach of contract by the Defendants, Plaintiff has been damaged.

WHEREFORE, Plaintiff demands judgment against the Defendants together with interest, attorneys' fees, costs of suit and such other relief as the Court may deem just and proper.

## **SECOND COUNT**

1. The Plaintiff repeats, reiterates and incorporates by reference the allegation contained in Count One of the Complaint as if set forth at length herein.

2. The actions of the Defendants, in refusing to pay the claims of the Plaintiff, constitute willful, wanton and malicious conduct on the part of the Defendants for the purposes of benefiting the Defendants to the detriment of the Plaintiff.

3. Thereby defendants have breached the common law duty of good faith and fair dealing pursuant to their insurance contract with plaintiff.

4. Defendants failure to comply with N.J.S.A. 17:29b-4, *et seq.*; N.J.A.C. 11:2-17.4; N.J.A.C. 11:2-17.5; N.J.A.C. 11:2-17-.1; N.J.A.C. 11:2-17.6(a), (b) and (c), N.J.A.C. 11:2-17.7(a), (b), (c), (e) and (g); N.J.A.C. 11:2-17.8(b), (a) through (e); and N.J.A.C. 11:2-17.1(a), evidence both the conduct and breach of the duty owed to plaintiff by defendants.

5. There was no “fairly debatable” reason for the Defendants not to make payments to its insured.

6. As a direct and proximate result of these actions of the Defendants, Plaintiff has been damaged.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory, consequential and punitive damages together with interest, attorneys’ fees, costs of suit and such other relief as the Court may deem just and proper.

## **THIRD COUNT**

1. The Plaintiff repeats, reiterates and incorporates by reference the allegation contained in Counts One and Two of the Complaint as if set forth at length herein.

2. The John Doe Defendants, 1-100 whose present identities are unknown, are individuals, corporations, partnerships or other entities responsible for, and guilty of, the same acts as alleged against named Defendants.



3. As a direct and proximate result of the actions of these Defendants, Plaintiff has been damaged.

WHEREFORE, Plaintiff demands judgment against these Defendants for compensatory, consequential and punitive together with interest, attorneys' fees, costs of suit and such other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury as to all issues pursuant to Fed.R.Civ.P. 38(b) and L.Civ.R.38.1.



BY: \_\_\_\_\_  
Adam Levy, Esq.  
LAW OFFICES OF MAURO C. CASCI

I hereby certify that the matter within the amended complaint was served within the time prescribed by Fed.R.Civ.P.12 and I further certify that a copy was served upon all counsel of record by way of regular mail on September 4, 2009.



BY: \_\_\_\_\_  
Adam Levy, Esq.  
LAW OFFICES OF MAURO C. CASCI

Dated: September 4, 2009

**DESIGNATION OF TRIAL COUNSEL**

The Court is advised that Adam Levy, Esq. is hereby designated as trial counsel.

A handwritten signature in black ink, appearing to be 'Adam Levy', written over a horizontal line.

BY: \_\_\_\_\_  
Adam Levy, Esq.  
LAW OFFICES OF MAURO C. CASCI  
Attorney for Yapak, LLC